

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Minerva Garza,

Plaintiff,

v.

Commissioner of Social Security,

Defendant.

CASE NO. 1:22-cv00207-GSA

ORDER GRANTING MOTION FOR ATTORNEY
FEES PURSUANT TO 42 U.S.C. 406(b)

(Doc. 30)

Plaintiff's counsel Jonathan O. Pena seeks an award of attorney fees pursuant to 42 U.S.C. § 406(b).

I. Background

Plaintiff entered into a contingent fee agreement with counsel which provides for attorney fees of up to 25% of the past due benefits awarded. The agreement also provides that counsel would seek fees pursuant to the Equal Access to Justice Act (EAJA), fees which would be refunded in the event of an award of past due benefits and payment of the 25% contingency fee.

Plaintiff filed a complaint in this Court on February 17, 2022, appealing the Commissioner's decision denying his application for benefits. The matter was fully briefed and judgment was entered for Plaintiff. Doc. 19, 23, 27. Counsel was awarded EAJA fees in an amount of \$7,000.00. Doc. 29.

On remand the agency determined that Plaintiff was disabled and entitled to past due benefits of \$115,081.00 from which the agency withheld t \$28,770.25, (25%) for potential payment to counsel. *Id.* at 3. Counsel seeks the full 25% withheld.

II. Legal Standard

An attorney may seek an award of fees for representation of a Social Security claimant who is awarded benefits:

Whenever a court renders a judgment favorable to a claimant under [42 USC § 401, et seq] who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent

1 of the total of the past-due benefits to which the claimant is entitled by reason of such
2 judgment . . .

3 42 U.S.C. § 406(b)(1)(A); *see also* *Gisbrecht v. Barnhart*, 535 U.S. 789, 794 (2002) (Section 406(b)
4 controls fees awarded for representation of Social Security claimants). A contingency fee agreement is
5 unenforceable by the Court if it provides for fees exceeding the statutory amount. *Gisbrecht*, 535 U.S. at
6 807 (“Congress has provided one boundary line: Agreements are unenforceable to the extent that they
7 provide for fees exceeding 25 percent of the past-due benefits.”).

8 District courts “have been deferential to the terms of contingency fee contracts § 406(b) cases.”
9 *Hern v. Barnhart*, 262 F.Supp.2d 1033, 1037 (N.D. Cal. 2003). However, the Court must review
10 contingent-fee arrangements “as an independent check, to assure that they yield reasonable results in
11 particular cases.” *Gisbrecht*, 535 U.S. at 807. In doing so, the Court should consider “the character of the
12 representation and the results the representative achieved.” *Id.* at 808. In addition, the Court should
13 consider whether the attorney performed in a substandard manner or engaged in dilatory conduct or
14 excessive delays, and whether the fees are “excessively large in relation to the benefits received.”
15 *Crawford v. Astrue*, 586 F.3d 1142, 1149 (9th Cir. 2009) (en banc); *Vazquez v. Com'r of Soc. Sec.*, No.
16 1:17-CV-1646-JLT, 2020 WL 2793059, at *2 (E.D. Cal. May 29, 2020).

17 **III. Analysis**

18 Here, Plaintiff was represented by experienced counsel and achieved a favorable result, namely an
19 order of remand, entry of judgment, and ultimately a substantial award of past due benefits. There is no
20 indication that counsel engaged in dilatory conduct, excessive delay, or substandard performance.
21 Counsel’s itemized bill reflects 32.8 hours of attorney time to review the administrative record and draft
22 a summary judgment motion, which is a reasonable time expenditure for the performance of those tasks.
23 Doc. 30-4.

24 The effective hourly rate amounts to \$877.14 per hour, which is substantial but within the upper
25 limit of reasonableness. *See Malta v. Comm'r of Soc. Sec.*, No. 1:18-CV-00415-CDB, 2024 WL 3618430,
26 at *3 (E.D. Cal. Aug. 1, 2024) (collecting cases and finding that “hourly rate of \$1,553.87 is within the
27 upper boundaries of reasonableness.”); *Coder v. Comm'r of Soc. Sec.*, No. 1:20-cv-00497-CDB, 2024 WL
28 1742026, at *3 (E.D. Cal. Apr. 23, 2024) (reducing de facto hourly rate of \$3,532.87 to \$1,500.00 per

hour); *Reyna v. Comm'r of Soc. Sec.*, No. 1:22-CV-00484-SAB, 2024 WL 4453046, at *2 (E.D. Cal. Oct. 9, 2024) (approving de facto hourly rate of \$1,326.57 per hour); *Langston v. Saul*, No. 1:18-CV-00273-SKO, 2020 WL 4501941, at *3 (E.D. Cal. Aug. 5, 2020) (\$1,453.42 per hour).

This award would by no means amount to a windfall. Matters pursuant to section 406(b) the lodestar is merely a guidepost, and a comparatively high effective hourly rate is generally warranted to compensate counsel for the risk assumed in representing social security claimants. *See Crawford v. Astrue*, 586 F.3d 1142, 1148 (9th Cir. 2009).

The \$28,770.25 total amount is also consistent with total contingent fee awards granted under section 406(b). *See, e.g., Ortega v. Comm'r of Soc. Sec.*, No. 1:12-cv-01030-AWI-SAB, 2015 WL 5021646, at *3 (E.D. Cal. Aug. 21, 2015) (\$24,350); *Thomas v. Colvin*, No. 1:11-cv-01291-SKO, 2015 WL 1529331, at *3 (E.D. Cal. Apr. 3, 2015) (\$44,603.50); *Boyle v. Colvin*, No. 1:12-cv-00954-SMS, 2013 WL 6712552, at *2 (E.D. Cal. Dec. 19, 2013) (\$20,577.57); *Jamieson v. Astrue*, No. 1:09-cv-00490-LJO-DLB, 2011 WL 587096, at *2 (E.D. Cal. Feb. 9, 2011) (\$34,500).

Considering the character of the representation, the result achieved, and the fee amounts awarded in similar cases, the request here is reasonable.

Accordingly, it is **ORDERED** as follows:

1. Counsel's motion for attorney fees pursuant to 42 U.S.C. 406(b) (Doc. 30) is granted.
2. The Commissioner shall certify a payment of a gross award in the amount of \$28,770.25 to: Jonathan O. Pena.
3. Upon receipt of this sum, Jonathan O. Pena shall remit directly to Plaintiff Minerva Garza the EAJA fees previously awarded in the amount of \$7,000.00.

IT IS SO ORDERED.

Dated: July 1, 2025

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE